

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CHARLES CARNEGLIA,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

Case No. 13-CV-1586

COMPLAINT

CIVIL ACTION PURSUANT TO
FEDERAL TORT CLAIMS ACT

VERIFIED COMPLAINT FOR DAMAGES

FILED
SCRANTON
JUN 13 2013
PER [Signature]
DEPUTY CLERK

I. Introduction

1. This is a civil action on a tort claim pursuant to the Federal Tort Claims Act ("FTCA") U.S.C. §1346(b) filed by Plaintiff CHARLES CARNEGLIA, a Federal Prisoner, alleging personal injury caused by negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment.

2. Plaintiff seeks damages in the amount of \$20,000.

II. Jurisdiction

3. Jurisdiction of this court is invoked pursuant to U.S.C. §1346(b) in that this is a civil action bringing claim "against the United States, for money damages, accruing on and after January 1, 1945, for personal injury caused by the negligent or wrongful act or omission of any employee of the Government while

acting within the scope of his office or employment."

4. Jurisdiction of this court is invoked pursuant to U.S.C. §1402(b) in that this civil action on this tort claim against the United States is brought forward in the District Court for the Middle District of Pennsylvania, the Judicial district where the Plaintiff resides and where the act or omissions complained of occurred.

5. Pursuant to §2401(b) the Plaintiff filed an administrative tort claim on May 16, 2013 and as of the filing date on this claim has received no response. Due to the two year date of the occurrence of injury, Plaintiff has filed a motion to hold this claim in abeyance until administrative tort has been resolved or has gone unresolved for the required time.

III. Parties

6. Plaintiff CHARLES CARNEGLIA at all times relevant was confined by the Federal Bureau of Prisons (FBOP) at the United States Penitentiary Canaan in Waymart, Pennsylvania (U.S.P. - Canaan).

7. The UNITED STATES IS named as defendant in that it is the only proper defendant in suit against the federal government for torts committed by its employees.

IV. Exhaustion of Available Remedies

8. Plaintiff has filed an administrative tort claim on 5/16/2013 and has received no reply and since two years almost past since the incident, Plaintiff has filed a motion with this

claim requesting that the court hold the claim in abeyance pending the outcome of the administrative tort claim or denial of such tort claim.

V. Factual Statement

9. On June 25, 2011, Plaintiff ate Chicken Fajitas served in the Chow Hall at U.S.P. Canaan.

10. Beginning the night of June 25, 2011, and becoming exceedingly more severe the next day, Plaintiff experienced the following symptoms: fever, diarrhea, vomiting, chills, and severe pain within his bones.

11. The same night of June 25, 2011, as the Plaintiff was experiencing the afore-mentioned symptoms, he noticed that other inmates were experiencing the same symptoms.

12. As the Plaintiff was experiencing the afore mentioned symptoms the night of June 25, 2011 and following into the next day, he noticed other inmates experiencing the same symptoms, and even others began to faint and fall-out on the recreation yard, as others were complaining to the unit officers and falling out inside the unit as well.

13. The entire U.S.P. Canaan went on lockdown the day of June 26, 2011, due to the extraordinary number of sick inmates and staff, some of which needed to be car ed to medical, and the prison remained on lockdown "upon information and belief" for approximately two weeks.

14. On June 28, 2011, staff from the Medical Department made rounds through the Plaintiff's unit, F-2.

15. During medical staff's visit to F-2, they took the

Plaintiff's name, while the Plaintiff noticed that many other names were on the list, and then he was told he would be seen and treated during sick call the next day.

16. During the same medical staff's visit they did pass out a slip of paper that suggested that the Plaintiff sip water and eat light. It also stated that "[i]f there is no improvement in 24 hours return to sick call. If symptoms worsen notify Health Service."

17. The June 28, 2011, visit by Staff from the Medical Department was not a 'sick call' so when there was no improvement in 24 hours, and due to the institution being placed on lockdown, the Petitioner could not "return to sick call".

18. Petitioner notified unit staff after 24 hours had elapsed from the June 28, 2011 Medical Department visit that there was no improvement and the Petitioner noticed that many other inmates were making the same notification.

19. There was no sick call conducted for the Petitioner nor anyone else that he could see or notice for the rest of the lock-down.

20. Plaintiff suffered the afore-described symptoms for the rest of lockdown, some days more severe than others, and till this very day gets nauseated over the smell of some of the meals containing chicken.

21. "Upon information and belief" inmates and staff that worked in the kitchen the day of June 25, 2011 will verify that the Food Service Administrator failed to verify the many steps involved in the proper preparation and serving of the Chicken Fajitas on June 25, 2011 were taken.

22. "Upon information and belief" inmates and staff that worked in the kitchen the day of June 25, 2011, will verify that the chicken was smelling and rotten, from the time it was pulled out of storage.

23. "Upon information and belief" FBOP Food Service Workers told the Food Service Administrator that the chicken was smelling and rotten, yet he served the chicken anyway.

24. "Upon information and belief" inmates and staff that worked in the kitchen on the day of June 24, 2011 into June 25, 2011, will verify that the chicken was pulled out for June 25, 2011 meal, way before it is to be removed from the temperature control to when it is cooked and served which is only supposed to allow 4 (four) hours.

25. "Upon information and belief" many staff members working at U.S.P. - Canaan on June 25, 2011 who ate the Chicken Fajitas fell just as sick as many of the inmates.

26. "Upon information and belief" the Food Service of U.S.P. Canaan (the Choe Hall/Kitchen) failed multiple inspections during the period of being lockdown and coming back up to a functional order, all of which kept the prison locked-down and inmates from eating in the chow hall.

27. Through the entirety of the incident, Plaintiff was not treated or monitored nor taken to medical for testing as he requested numerous times of medical staff and institutional staff as he suffered from the afore-mentioned symptoms, and through observation the Plaintiff noticed during the lockdown that many other inmates were also not being treated nor monit-

ored, nor being taken to medical.

CLAIMS FOR RELIEF

A. Pursuant to the FTCA, Pennsylvania law applies because the negligent conduct occurred in the Commonwealth of Pennsylvania. Plaintiff will establish below, the following elements, covered in the Factual Statement, necessary to prove the action(s) of negligence:

- I. The existence of a duty or obligation recognized by law, requiring the actor to conform to a certain standard of conduct;

28. The Food Service Administrator was responsible to follow the Food Safety practices and protocols of the FBOP PROGRAM STATEMENT 4700.05 which dictates duty and obligation in feeding the Petitioner and the rest of the prison population and the standard of conduct in which to facilitate that.

29. The FBOP Officers working as kitchen staff were responsible to follow the Food Safety practices and protocols of the FBOP PROGRAM STATEMENT 4700.05 which dictates duty and obligation in feeding the Petitioner and the rest of the prison population and the standard of conduct in which to facilitate that.

30. The Medical Staff working at the time of the incident(s) described above had a duty and obligation to give adequate medical care and treatment to the Petitioner and the rest of the prison population in accordance to the FBOP PROGRAM STATEMENT.

31. The Warden, Assistant Wardens, and other Senior Staff had a duty and obligation to listen to the complaints and direct help and assistance to the Petitioner and the rest of the prison

population in accordance to the FBOP PROGRAM STATEMENT.

II. A failure on the part of the defendant
to conform to that duty, or a breach
thereof;

32. The Food Service Administrator failed and/or breached his duty to conform to the Food and Safety practices and protocols of the FBOP PROGRAM STATEMENT 4700.05 which dictates duty and obligation in feeding the Petitioner and the rest of the prison population.

33. The FBOP Officers working as kitchen staff failed and or breached thier duty to conform to the Food and Safety practices and protocols of the FBOP PROGRAM STATEMENT 4700.05 which dictates duty and obligation in feeding the Petitioner and the rest of the prison population.

34. The Medical Staff working at the time of the incident(s) described above failed and/or breached their duty to give adequate medical care and treatment to the Petitioner and the rest of the prison population, according to FBOP PROGRAAM STATEMENT.

35. The Warden, Assistant Wardens, and other Senior Staff failed and/or breached their duty to listen to the complaints and direct help and assistance to the Petitioner and the rest of the prison population, according to FBOP PROGRAM STATEMENT.

III. A causal connection between the defend-
ant's breach and the resulting injury;

36. Failure or breach thereof by the Food Service Administrator to the duty or obligation dictated by the FBOP PROGRAM STATEMENT 4700.05 concerning the preparation and serving of chicken is the direct causal connection to the Petitioner get-

ting sick from food poisoning.

37. Failure or breach thereof by the staff working in the kitchen to the duty or obligation dictated by the FBOP PROGRAM STATEMENT 4700.05 concerning the preparation and serving of chicken is the direct causal connection to the Petitioner getting sick from food poisoning.

38. Failure or breach of duty by Medical Staff working at the time of the incident(s) to conform to the duty or obligation dictated by the FBOP PROGRAM STATEMENT concerning the providing of adequate medical care and treatment to the Petitioner and the rest of the prison population is the direct causal connection to the Petitioner remaining sick and suffering from pain for a majority if not totality of the prison lockdown.

39. Failure or breach of duty by the Warden, Assistant Wardens, and other Senior Staff to conform to the duty or obligation dictated by the FBOP PROGRAM STATEMENT concerning the listening to of complaints and directing help and assistance to the Petitioner and the rest of the prison population is the direct causal connection to the Petitioner remaining sick and suffering from pain for a majority if not totality of the prison lockdown.

IV. Actual loss and damage suffered by the complainant.

40. As a result of the Food Service Administrator's negligent conduct on June 25, 2011, the Petitioner became extremely ill and violently sick, lasting for the majority if not totality of the prison lockdown and further, the Petitioner now has problems eating chicken products (majority of the meals).

41. As a result of the negligent conduct of the Staff working in the kitchen on June 25, 2011, the Petitioner became extremely ill and violently sick, lasting for the majority of the prison lockdown and further, the Petitioner now has problems eating chicken products (majority of the meals).

42. As a result of the Medical Staff's negligent conduct on June 25, 2011 and the rest of the following prison lockdown, the Petitioner remained extremely ill and violently sick, lasting the majority if not the totality of the prison lock-down.

43. As a result of the Warden's, Assistant Warden's, and Senior Staff's negligent conduct on June 25, 2011, and the rest of the following prison lockdown, the Petitioner remained extremely ill and violently sick, lasting the majority if not the totality of the prison lock-down.

RELIEF REQUESTED

WHEREFORE, Plaintiff requests that this court grant the following relief:

Award compensatory damages in the amount of \$20,000 (twenty-thousand dollars) for Plaintiffs physical and emotional pain and suffering (past, present & future) concerning this complaint.

Pursuant to 28 U.S.C. 1746, I declare (or certify, verify, or state) under penalty of perjury that the following is true and correct.

Dated 6-4-13

RES. CARNEGIA, CHARLES
Charles Carneglia
United States Penitentiary -
Canaan
P.O. Box 300
Waymart, PA 18472

CERTIFICATE OF SERVICE

I, CHARLES CARNEGLIA, hereby certify that a true and correct copy of the foregoing COMPLAINT PURSUANT TO FTCA was served First Class Mail, Postage Prepaid, addressed to:

U.S. Dept. Of Justice
FBOP Northeastern Regional Office
Regional Counsel
U.S. Customs House & Chestnut Street
Philadelphia, PA 19106

Pursuant to the prisoner's mailbox rule established by the United States Supreme Court in Houston v. Lack, 487 U.S. 266(1988) by placing said document in the institutional legal mailbox here at the United States Penitentiary Canaan, at Waymart, PA. 18472, this 4th day of June, 2013.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the following is true and correct.

Executed on: 6-4-13

Res. CARNEGlia, CHARLES
Charles Carneglia
United States Penitentiary -
Canaan
P.O. Box 300
Waymart, PA 18472

CHARLES CARNEGLIA
REG # 08773-016
UNITED STATES PENITENTIARY
CANAAN
PO BOX 300
WAYMART, PA 18472

NOTE: Enclosed

RECEIVED
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JUN 13 2013

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